IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 8036 to 8044 of 1999,
8190, 8191 of 1999 and 8289 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE M.R.CALLA

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1. Whether Reporters of Local Papers may be allowed to see the judgement? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

VINODCHANDRA SHANTILAL SHAH

Versus

CHIEF CONTROLLING REVENUE AUTHORITY

Appearance:
MR M.K. PATEL for Petitioners
MR BH BHAGAT for MR HM BHAGAT for Respondents - The Chief Controlling Revenue Authority and The Deputy Collector, Department of Stamp Duty Valuation.
MS MANISHA LAVKUMAR, ld.AGP for respondents - Collector, Banaskantha Dist., The Deputy Town Planner, Mehsana, and the State of Gujarat in SCA No.8036/99 and MR AJ DESAI, ld.AGP for the said respondents in all other 11 SCAs.
MR MH RATHOD for Respondent-Disa Nagar Palika.

CORAM : MR.JUSTICE M.R.CALLA

Date of decision: 30/03/2000

COMMON ORAL JUDGEMENT

These 12 Special Civil Applications involve common questions of law based on identical facts and therefore, I propose to decide all these 12 Special Civil Applications by this common judgment and order as under:

2. Certain plots had been put to public auction by Disa Nagar Palika in the year 1992. The public auction was held and the upset price in respect of these plots as was determined by the Deputy Town Planner was declared. The public auction was held on 29th August 1992. In this public auction, the petitioners herein purchased different plots at different prices as per the bids given by them and accordingly the sale deeds were required to be registered before the Sub Registrar. The petitioners herein paid the stamp duty at the upset price which was fixed and did not pay the stamp duty at the actual price which was fetched by the Municipality. The concerned Sub Registrar had registered the sale deeds and for such registration, the petitioners paid the stamp duty at the upset price at which the plots in question were put to public auction. The Deputy Collector, Stamp Duty Valuation Organisation, Banaskantha, at Palanpur, therefore, issued notices under Sec.32(A)(4) of the Bombay Stamp Act, 1958 read with Rule 4(2) of the relevant Rules as to why the stamp duty may not be charged at the market value along with penalty. After such notices and after hearing the petitioners, the Deputy Collector, passed the order on 2nd May 1992 directing the petitioners to pay the difference in the stamp duty as mentioned in Schedule-I and Schedule-II against their names in this order as he found that in each of these cases, the actual amount which was paid to the Municipality as per the respective bid was higher than the amount at which the document was sought to be registered as per Column nos.4 and 5 of this Schedule and the difference was also determined and the same was also mentioned in column no.6 as contained in Schedule-I and II. It has also been recorded by the Deputy Collector in this order dated 2nd May 1999 that six persons named in Schedule-I had appeared and agreed to pay the difference and had stated that some concessions may be made in their favour with regard to the amount of penalty in as much as their intention was not to put any loss of revenue to the Government but they had acted on the basis of the information as was given to them by the Municipality and the order which had been passed by the Collector, Banaskantha, on 23rd November 1992. Schedule-II of this order, includes the names of those persons upon whom the

notices had been served but who did not appear in response to the notice and did not raise any grievance. The petitioners have not given the correct and complete details and therefore the same be read from the statements at Appendix-'A' and Appendix-'B' with this judgment - which are to be treated as part and parcel of this judgment.

It appears that the order as was passed by the Deputy Collector on 2nd May 1996 was taken in appeal before the Chief Controlling Revenue Authority, who rejected the appeals on 22nd June 1998. These orders are under challenge at the instance of the petitioners.

3. The main contention which has been raised on behalf of the petitioners is that the Collector, at Banaskantha, in his order dated 23rd November 1992, i.e. Annexure.E at page nos.28-31 in Special Civil Application No.8036 of 1999, while mentioning the conditions, had clearly mentioned in condition no.2 that the stamp duty was to be paid at the upset price as was fixed by the Deputy Town Planner and therefore, there is no question of payment of any stamp duty for the actual amount which was fetched by the Municipality in this auction and the stamp duty was therefore paid at the upset price. In this regard, the attention of this Court was invited by Mr.Bhagat to a subsequent corrigendum dated 22nd December 1992 issued by the Collector himself. A copy of this corrigendum has been filed along with the affidavit-in-reply and it appears from this corrigendum that it was issued because the Chief Executive Officer of the Municipality had sent a letter to the Collector for removing the conditions nos.3 and 4 as were contained in the Collector's order dated 23rd November 1992. The Collector, on the basis of the Chief Executive Officer's letter, deleted the conditions nos.3 and 4 vide this corrigendum dated 22nd December 1999, but also mentioned in this corrigendum that the documentation was to be done on the basis of the price which was actually fetched at the time of auction. Therefore, in the proceedings in this petition before this Court on 29th February 2000, it was rightly observed by the Court (Coram: R.K. Abichandani, J.) that prima facie, it did not appear that the condition no.2 as such had been withdrawn vide the corrigendum dated 22nd December 1992. However, it is made clear that in substance, once it was mentioned in the corrigendum that the documentation was to be done on the basis of the actual price which was fetched in the auction by the Municipality, the condition no.2 substantially stood revoked.

4. Be that as it may, the question is as to whether the District Collector, Banaskantha had any authority to take a decision in this regard as to at what price the stamp duty was to be paid and what should be the amount of stamp duty? The stamp duty is to be determined according to the provisions of the Act and the Rules made thereunder and the District Collector has no say in this regard. Therefore, whether the condition no.2 was lifted or not, the question remains as to at what price the stamp duty was to be paid; whether it was to be paid at the upset price or it was required to be paid at the actual price which was fetched at the time of the public auction by the Municipality.

5. Learned Counsel for the petitioners also invited the attention of this Court to the resolution dated 30th May 1991 issued by the Revenue Department of the Govt. of Gujarat. According to this resolution, in case of public auctions by the local bodies such as Panchayats or Municipalities, in case any property which is sold out by a public auction, Sec.32A is not applicable. He has submitted that since the Government itself by its resolution had ordered that Sec.32A is not applicable in case of public auction held by local bodies like Municipalities, the Deputy Collector, Stamps Valuation Organisation had no authority to embark upon any inquiry for the purpose of arriving at the market value of the plots in question and he could not have proceeded to order that the stamp duty was to be paid at the price which was actually fetched in the public auction and that what was paid at the upset price was sufficient to meet the requirement and the order which was passed by the Deputy Collector on 2nd May 1996 was contrary to this resolution. In the opinion of this Court, this argument is wholly misconceived rather preposterous. The interpretation which has been put to this condition by the learned Counsel in these cases is wholly contrary to the legislative intent. Once it is said in the resolution that Sec.32A is not applicable in case of public auctions held by the local bodies, it does not mean that the stamp duty would be paid at the upset price at which the property was put to auction. The meaning is that, in such cases, it is not necessary to hold any inquiry under Sec.32A and without holding any inquiry the authority has to proceed on the basis of the actual price which was fetched at such public auction and it is only in that sense that the resolution says that Sec.32A is not applicable. It is clearly discernible from the contents of the resolution read with the relevant provisions of law that in case where any property is sold out by a public auction by a local body without going

into any inquiry under Sec.32A, the stamp duty is to be paid at the actual price. In such matters, the upset price is wholly irrelevant under the Bombay Stamp Act, 1958 and the market value of any property has itself been defined in Sec.2(na) as under:

> "Market value". In relation to any property which is the subject matter of an instrument means the price which such property would have fetched if sold in open market on the date of execution of such instrument."

It is, therefore, clear that the market value in relation to the property sold out through public auction by local bodies is the value which the property has actually fetched in such cases. In the present cases, it is the admitted position that the stamp duty has not been paid at the actual price which was fetched in the public auction by the Municipality, but the same has been paid only at the upset price. Therefore, I find that neither the Collector had right to make any concession in this regard nor any authority could take a decision on the basis of the Govt. resolution referred to hereinabove that the stamp duty is to be paid at the upset price only or that non-applicability of Sec.32A as per resolution would mean that even if the stamp duty was paid only at upset price in the auction held by Municipality the competent authority under Sec.32A was to accept the duty paid at upset price in auction held by a local body like Municipality and could not ask to make good the deficiency as per the actual price fetched in the auction. The correct position is that in cases where any property is sold out by a local body through public auction, no inquiry may be necessary under Sec.32A and the price at which it is sold out in auction by such local body may be accepted as the market value of such property for the purpose of charging stamp duty for documentation, but that certainly does not and cannot mean that the authorities under the Stamp Act are bound by the upset price at which the property is put to auction. Even if upset price is determined by the Govt. officers like Dy.Town Planner - such upset price is not final for the purpose of charging stamp duty when in fact the property is sold out at a price much higher than the upset price.

6. Learned Counsel for the petitioners has also submitted that the amount which was paid beyond the upset price was paid to the Municipality for the purpose of development charges. Firstly, there is nothing of this sort which can be said to have any legal sanction for the

purpose of avoiding the payment of stamp duty. Secondly, whether the petitioners call this amount as development charges or not, the effect is that at the auction, the bid as was given by the petitioners was accepted and it is the amount of that bid which should determine as to what is the actual amount fetched by the Municipality. It is for the Municipality to put the said amount to any use for development etc., but that would not absolve the parties from the liability of payment of due stamp duty and to avoid the payment of the stamp duty by saying that the stamp duty is to be paid at the upset price only. The argument raised by the petitioners that the upset price is the market value and, therefore, there could be stamp duty only at the upset price is not at all impressive for the simple reason that no other meaning to the market value of the property can be given than the one defined under the Act. The Act says that it must be the price which the property could have fetched if sold in open market and in these cases, this fact is established that the plots in question have fetched much higher amount than upset price as indicated in Schedule-I and II in the body of the order passed by the concerned Deputy Collector and therefore, the upset price cannot be determinative for the purpose of payment of stamp duty. The upset price is only a price which is fixed by the party which puts any property to auction and it only means that the party which puts the property to auction would not sell the property at any price lesser than the declared upset price but that does not mean that it becomes the market value even if in fact the property is sold out at a bid of higher amount. Therefore, this argument which has been raised on behalf of the petitioners has no basis and the same cannot be accepted.

7. For the reasons aforesaid, I do not find any merit in any of these Special Civil Applications. All these Special Civil Applications are accordingly

Aplication is hereby discharged. The interim order passed in any of these matters ceases to be operative. No order as to costs.

(M.R. Calla, J.)

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APPENDIX-'A'

Sr. No.	SCA No.	Name of the Petitioner	Sr.No. in Sch.I or in Sch.II of the order dt.2.5.96 passed by Dy. Collector, Stamp Duty.	Date of order of @@ in Sch.I or in Sch.I or	Remarks

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1. 8036/99 Vinodchandra Shantilal Shah 9 in Sch.II 12.6.98 ---
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(Mr Bhagat has said that in view of separate order in this case, the name does not find place in ord r dt.2.5.1996).

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11. 8191/99 Mahendrakumar Chandulal Shah --- Not Nam of the petitioner is available nbl nble nble nble

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7. 8042/99 Mahendrakumar Nemichand Shah 1140 47,690.00 2.5.96
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ch.I)

8. 8043/99 Bordia Anilkumar Laduram 1808 26,090.00 2.5.96
12.6.98
5.7.93 (Sr.No.11
Sch.II)

9. 8044/99 Gautamkumar Nemichand Shah 1176 43,910.00 2.5.96
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10. 8190/99 Rameshchandra Chandulal Shah 1959 25,280.00 2.5.96
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27.3.93 (Sr.No.14
Sch.II)

11. 8191/99 Mahendrakumar Chandulal Shah 1957 32,150.00 2.5.96
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12. 8289/99 Fulchand Dhanraj Shah 2667 33,934.00 2.5.96 12.6.98
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